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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1973

No. 73-653

THE STATE OF WASHINGTON,
Petitioner,

vs.

MICHAEL J. FOX and GUADALUPE M. GAMBOA,
Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION

QUESTIONS PRESENTED

I. Where a state criminal conviction is reversed by the State's highest court upon independent grounds of state law, does the United States Supreme Court have jurisdiction to review that reversal?

II. Does the First Amendment protect a labor organizer and an attorney from prosecution under a state criminal trespass statute when they go upon the privately owned premises of a migrant labor camp in order to speak with migrant laborers resident in the camp who have requested their services?

ADDITIONAL STATUTES INVOLVED

The pertinent statutes of the State of Washington (R.C.W. 49.36.010 and R.C.W. 49.36.030) are set forth in the Petition for Writ of Certiorari at App. 7.

STATEMENT OF THE CASE

The Petitioner's statement of the case, set out on pp. 4-8 of its Petition for a Writ of Certiorari, seriously misstates the facts of this case, includes allegations not reflected in the record below, and ignores numerous facts upon which the Supreme Court of the State of Washington based its unanimous reversal of the Respondents' convictions. Rather than attempt to reconstruct the facts of this case, the Respondents respectfully refer the Court to the opinion of the Supreme Court of the State of Washington, set out in Appendix A of the Petition and published at 82 Wn. 2d 289 (1973). The most important facts concerning the case are recited within that opinion and are supported by the record.

The following is an abbreviated recitation of the relevant events. The Respondent Fox is an attorney. (St. 93, 98, 215-217.) The Respondent Gamboa is a farm labor organizer for the United Farm Workers Union, A.F.L.-C.I.O. (St. 188-189.) On June 19, 1971, the Respondents were arrested for trespass within a migrant labor camp utilized by Rogers Walla Walla, Inc. to house asparagus cutters during the harvest season. (St. 5, 32, 111.) Several days earlier, the Respondent Gamboa had visited the camp, and spoken

with Alfonso Romo and several other workers who had impressed him with their need for legal assistance to help them in a contract dispute with Rogers Walla Walla. The two Respondents had come to the camp on the day in question in response to these requests for assistance. (St. 95, 127-130, 134-135, 142-147, 152-153, 189-190, 199, 203, 303; Def. Ex. 3, 22 [excluded St. 125], 23, 24, 26.)

At about 5:10 p.m. on June 19, 1971, the Respondents, accompanied by Irwin Nash, a journalist and photographer, and by Sandy O'Brien and Patricia Cope, two summer employees of the union, arrived at the camp. (St. 24, 226-227.) Immediately upon arriving Fox identified himself as an attorney to Bernard J. Lang, the camp guard, and showed Lang his Washington State Bar Association membership card. (St. 27, 35, 229; Def. Ex. 32.) Lang believed, at that time, that Fox was in fact an attorney. (St. 35, 56.) Lang, nevertheless, challenged Fox's right to be on the premises, and upon orders from his superiors, called the sheriff's office. (Petition for Writ of Certiorari, App. 5.) Prior to the arrival of the sheriff's deputies, Gamboa had introduced Fox to several workers within one of the barracks and Fox had begun to interview and advise them. (St. 233-235.) The arrival of the deputies abruptly terminated this attorney-client relationship. The deputies told the Respondents to leave, and thereupon the three people who had accompanied the Respondents left the premises. Shortly thereafter the Respondents were arrested and removed from the camp. At all times, the

Respondents and the persons accompanying them acted in a peaceful fashion. (St. 25-61.) Irwin Nash, the photo-journalist, who had come to the camp with Fox and Gamboa, tape recorded virtually every word exchanged, between Fox, Gamboa, and the arresting officers prior to the arrest, and the tape and written transcript of this conversation were admitted into evidence. (Def. Ex. 21, 19.)

REASONS FOR DENYING THE WRIT

I

THE DECISION OF THE SUPREME COURT OF WASHINGTON IS BASED ON INDEPENDENT STATE GROUNDS AND AS SUCH IS NOT REVIEWABLE BY THIS COURT.

The Petitioner has not stated a serious question before this Court. The Petitioner is asking this Court to review anew the evidence in this case,[1] although the highest court of the State of Washington has ruled that the evidence in the record does not meet the requirements for conviction under the applicable state statute. Yet this Court has held that the decisions of the highest court of a state on matters of state law are in general conclusive upon this Court. *Huddleston v. Dwyer,* 322 U.S. 232 (1943).

The decision by the lower court was grounded on the finding that no criminal violation was proved under Washington State law. First, the court below found as a matter of state law that the migrant workers, as tenants, had a right to invite the Respondents

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[1]See Petition for Writ of Certiorari, p. 4.

onto the premises. *Konick v. Champeneys,* 108 Wash. 35, 183 P. 75 (1919). Second, the court ruled that the Respondents having been invited, had a right to be on the premises. The Respondent Gamboa had a right of entry on the premises as a labor union organizer. And the Respondent Fox, an attorney, had a right of entry on the premises to provide legal counseling services to workers through the labor organization represented by the Respondent Gamboa.

These rights, of course, are recognized generally by federal, as well as state law. Hence the Supreme Court of Washington discussed certain leading federal cases as well as state statutes and precedents. However, the holding below was based on the proposition that, when the Respondents entered upon the premises of the migrant camp, their rights to so do were safeguarded under Washington state case law, *Kimbel v. Lumber and Sawmill Workers Union,* 189 Wash. 416, 65 P.2d 1066 (1937), and under two Washington statutes R.C.W. 49.36.010[2] and R.C.W. 49.36.030.[3]

This Court will not reexamine the judgment of a state court merely because a federal question may

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[2]It shall be lawful . . . to organize . . . for the purpose of . . . bettering the condition of the members of such organizations; or carry out the legitimate purpose *by any lawful means.* (Emphasis supplied.)

[3]Prosecution prohibited. No person shall be indicted, prosecuted, or tried in any court of this State for entering into or carrying on any lawful arrangement, agreement, or combination between themselves made with a view of lessening the number of hours of labor or increasing wages or bettering the conditions of working men and women, *or for any lawful act done in pursuance thereof.* (Emphasis supplied.)

have been decided, unless it appears that such a question was necessarily involved in the decision. See *Moore v. Mississippi,* 21 Wall. 636 (1875), and annotation in 84 L.Ed. 925 at 941. No federal question was necessarily involved in the decision below. To the extent that federal court precedents and First Amendment interests were discussed in the decision of the court below, this discussion was not necessary to the ruling. Therefore, the judgment of the Supreme Court of Washington, reversing the criminal trespass convictions under a state statute, rests on adequate and independent state grounds and as such is not reviewable by this Court. *Herb v. Pitcairn,* 324 U.S. 117 (1945). At the very least, it is clear that this is a case in which the questions of state law "are so interrelated" with any conceivable federal question "as not to warrant the exercise of the certiorari jurisdiction of this Court." *Duncan v. Tennessee,* 405 U.S. 86, 87 (1972).

II

THE DECISION BELOW IS CORRECT ON THE MERITS AND DOES NOT WARRANT REVIEW BY THIS COURT

If there is any federal issue before this Court, it is whether an uncontested Washington State trespass statute could be used to punish the Respondents' exercise of First Amendment rights of entry, at the invitation of the tenant-workers, to the migrant labor camp owned and used for business purposes by a private corporate employer. Petitioner contends that under the principles of *Central Hardware Co. v.*

NLRB, 407 U.S. 539 (1972) and *Lloyd Corp. v. Tanner,* 407 U.S. 551 (1972), the Respondents did not have a First Amendment right to enter into the migrant camp. The Petitioner's argument is palpably invalid.

In *Lloyd Corp. v. Tanner,* this Court limited the applicability of *Marsh v. Alabama,* 326 U.S. 501 (1946), and *Amalgamated Food Employees Union v. Logan Valley Plaza,* 391 U.S. 308 (1968), but by no means did it overrule these decisions. In the *Lloyd* case the Court distinguished *Marsh* on the ground that it dealt with the special situation of a "company town." The Court also ruled that *Logan Valley Plaza* recognized only a limited First Amendment protection for picketing "directly related in its purpose to the use to which the shopping center property was being put" (*Lloyd Corp. v. Tanner,* 407 U.S. at 563), and under the facts of *Logan Valley Plaza,* there were no other reasonable means of communication available to the persons seeking to exercise their First Amendment interests (*Lloyd Corp. v. Tanner,* 407 U.S. at 566).

The facts of the instant case are in no way similar to those of *Lloyd Corp. v. Tanner;* they are very similar to the facts in both *Marsh* and *Logan Valley Plaza.* Thus, even under the tests as defined in *Lloyd Corp. v. Tanner,* the Respondents' actions were protected by the First Amendment.

The purpose of the Respondents' entry onto the migrant camp was to support and enhance union organization by rendering urgently needed legal counsel to

the worker-residents concerning their rights in their employment situation. (See Petition for Writ of Certiorari, App. 4-5.) In the instant case there is a direct relationship between the Respondents' exercise of their First Amendment rights and the business operations of the migrant camp by the employer. Hence, this case is like *Logan Valley Plaza* and unlike *Lloyd Corp.* See 407 U.S. at 563. Additionally, unlike *Lloyd Corp.*, where the picketers had a convenient and adequate alternative means of communication, obviously the Respondents had to enter the employer's premises, where the intended audience both worked and lived, to accomplish their First Amendment protected purposes. See *Logan Valley Plaza,* 391 U.S. at 321-22.[4] Thus it is clear that the facts of this case bring the decision under the principles of *Logan Valley Plaza* as clarified by *Lloyd Corp. v. Tanner.*

This case provides the Court with an example of what the Court in *Lloyd Corp.* referred to as an economic anomaly of the past, "the company town." 407 U.S. at 561. This anomaly continues to exist in its rural counterpart, "the migrant camp." Numerous courts have described the conditions of these camps. The District Court in *Forgueras v. Hassle,* 331 F.

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[4]Petitioner maintains that Respondent Fox had no right to offer his services to the migrant workers. That this argument is clearly wrong is shown by the cases cited by the lower court which demonstrate that Fox had a right under the First and Fourteenth Amendments to accept the workers' invitation to assist them. See *Brotherhood of R. R. Trainmen v. Virginia ex rel. Virginia State Bar,* 377 U.S. 1 (1964); *N.A.A.C.P. v. Button,* 371 U.S. 415 (1963); *United Mine Workers of America, Dist. 12 v. Illinois State Bar Ass'n,* 389 U.S. 217 (1967); *United Transportation Union v. State Bar of Michigan,* 401 U.S. 576 (1971).

Supp. 615, 620 (W.D. Mich. 1971) described some of the problems of isolation characteristic of migrant life.

> Language, color, and culture isolate the migrant from the community where he works. Migrants live in labor camps, often miles from the nearest town; usually they do without private transportation. This severely limits access to nearby towns. Long working hours and money likewise limit the ability to leave camp.

The Court in *Franceschina v. Morgan,* 346 F.Supp. 833, 835 (S.D. Ind. 1972), stated:

> Although theoretically free to travel about when not at work, most migrants spend their leisure time in camp. The language barrier, lack of transportation, lack of surplus funds for tourism, and the desire to try to save a little money for the winter all contribute to this result. They are reluctant to discuss matters with persons represented by plaintiffs in such places as public stores and shopping centers, assuming that they ever travel to such, because their Spanish language dialogues draw unwanted attention from the natives. As a practical matter, therefore, their best assurance of contact with the outside world is by means of visits to their camp. . . .

In this case, the migrant laborers paid Rogers Walla Walla, Inc. $1.75 per day for board and room, for which the company provided a diversity of services at the camp such as a mess hall, store, recreation room, laundry facility and a company office containing the camp's only telephone. (Petition for Certiorari, App. 3.) Thus, as in the company town de-

scribed in *Marsh v. Alabama,* the migrant labor camp in this instant case takes on the functions of a town, in which the workers spend much, if not all of their time. To such a place, *Marsh's* First Amendment standards apply.

Central Hardware Co. v. NLRB, 407 U.S. 539 (1972), which was relied upon by the Petitioner is totally inapplicable because that decision was based on the application of § 7 of the National Labor Relations Act, 29 U.S.C. § 157. Since agricultural workers are not entitled to the protections of the National Labor Relations Act, see 29 U.S.C. § 152(3), it would be perverse to subject them to any limitations of their constitutional rights that may emanate from the statute. But this Court need not address that question. For, if it were applicable, § 7 would protect the activities at issue in the instant case. The migrant camp is "like a mining or lumber camp where employees pass their rest as well as their work time on the employer's premises, so that union organization must proceed upon the employer's premises or be seriously handicapped." *Republic Aviation Corp. v. National Labor Relations Board,* 324 U.S. 793, 799 (1944). As this Court has ruled, ". . . when the inaccessibility of employees makes ineffective the reasonable attempts by nonemployees to communicate with them through the usual channels, the right to exclude from property has been required to yield to the extent needed to permit communication of information on the right to organize." *National Labor Relations Board v. Babcock Wilcox Co.,* 351 U.S. 105, 112 (1956).

CONCLUSION

For the foregoing reasons, Respondents contend the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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December, 1973.